



Entered on Docket
April 17, 2009

Hon. Linda B. Riegler
United States Bankruptcy Judge

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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

In re:

THE RHODES COMPANIES, LLC, aka
"Rhodes Homes, et al.,¹

Debtors.

Case No.: BK-S-09-14814-LBR
(Jointly Administered)

Chapter 11

Affects:
☒ All Debtors
☐ Affects the following Debtor(s)

Hearing Date: April 17, 2009
Hearing Time: 9:30 a.m.
Courtroom 1

**FINAL ORDER (I) AUTHORIZING THE DEBTORS TO SELL HOMES FREE AND
CLEAR OF LIENS AND OTHER INTERESTS, (II) ESTABLISHING PROCEDURES
FOR THE RESOLUTION AND PAYMENT OF LIENS AND CLAIMS, AND (III)
AUTHORIZING FINANCIAL INSTITUTIONS TO HONOR ALL OBLIGATIONS
RELATED THERETO**

Upon the motion of the above-captioned debtors and debtors in possession in these chapter 11 cases (the "Debtors") for entry of an order pursuant to sections 105(a), 363, and 1108 of title 11 of the United States Code (the "Bankruptcy Code"), (a) authorizing the Debtors to continue the construction, sale and closing of homes to customers in the ordinary course of business, (b) authorizing the Debtors to honor certain prepetition contract obligations to homebuyers, including, where appropriate in the Debtors' business judgment and not inconsistent with past business practices, to refund deposits or provide other customer incentives, (c) providing that the sale of homes to the Debtors' customers shall be free and clear of all liens, claims, encumbrances and other interests, (d) authorizing, but not directing, the Debtors, in their sole discretion or as ordered by the Court pursuant to the established procedures, to pay claims secured by liens out of the proceeds of home sales, (e) establishing procedures for resolving disputed lien claims, (f) authorizing the Debtors to proceed immediately with the sale of homes and establishment of the lien procedures notwithstanding the possible applicability of Rules 6004(h) or 6003 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and (g) authorizing financial institutions to receive, process, honor and pay all checks presented for payment and electronic payment requests relating to the foregoing (the "Motion"); and it appearing that the relief requested is in the best interests of the Debtors' estate, their creditors, and other parties in interest; and it appearing that this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that this matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2); and it appearing that venue of these proceedings and the Motion is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that notice of the Motion and the opportunity for a hearing on the Motion was appropriate under the particular circumstances and no other or further notice need be given; upon the record herein,

1 after due deliberation thereon, good and sufficient cause exists for the granting of the relief as set
2 forth herein, IT IS HEREBY

3 ORDERED that the Motion is GRANTED; and it is further

4 ORDERED that the Debtors are authorized to continue the construction, sale and closing
5 of homes to customers in the ordinary course of business in accordance with the budget and
6 limitations provided under any order authorizing the Debtors' use of cash collateral; and it is
7 further

8 ORDERED that the Debtors and any intermediary financial institution participating in any
9 home closings are authorized to transfer title, deed property, and take any other actions in the
10 ordinary course of business as may be necessary to transfer ownership to the Debtors'
11 homebuyers; and it is further

12 ORDERED that, pursuant to section 363(f) of the Bankruptcy Code, all sales of homes by
13 the Debtors shall be free and clear of any and all liens, claims, interests, and encumbrances,
14 including, without limitation, all liens (whether asserted or unasserted, known or unknown), with
15 all such liens to attach to the proceeds of each home sale, as applicable, in the same force, effect
16 and priority as such liens had immediately prior to the sale, subject to the rights and defenses of
17 the Debtors and any party in interest with respect to any such asserted liens; and it is further

18 ORDERED, to protect the rights of parties asserting liens on the Debtors' homes sold
19 pursuant to the Motion, the Lien Procedures as set forth in the Motion shall apply for the
20 expedited resolution and payment of such Construction Liens; provided, that, prior to paying any
21 Construction Lien, the Debtors shall provide advance notice to Credit Suisse, as agent under the
22 Debtors' first lien credit facility (the "Agent"), Wells Fargo Bank, N.A., as agent under the
23 Debtors' second lien credit facility (the "Second Lien Agent"), and Winchester Carlisle Real
24 Estate Partners, LLC, the advisor to the First Lien Steering Committee ("WCP") and the Agent
25 and the First Lien Steering Committee shall then have 3 business days upon receipt of
26 documentation related to the proposed payment in respect of any Construction Lien to object to
27 the payment thereof by providing written notice to the Debtors. If such an objection is provided
28

1 to the Debtors, the parties agree to attempt to resolve any objection in good faith, but the Debtors
2 shall have the option of filing an application for an order shortening time with this Court on not
3 more than 5 days notice as to why such Construction Lien should be paid. While such objection
4 is pending, the Debtors shall not be authorized to pay such Construction Lien. If no objection is
5 received, the Debtors shall be authorized to pay such Construction Lien in accordance with this
6 Order; and it is further

7 ORDERED that with respect to the Lender Liens asserted by the Debtors' secured lenders,
8 the Debtors shall provide each of the Agent, the Second Lien Agent, WCP with a copy of the
9 escrow agreement and estimated closing statement related to any home that the Debtors wish to
10 close. The Debtors shall provide access for the Agent and WCP to visit any home proposed to be
11 sold. The Agent and the First Lien Steering Committee shall then have 3 business days upon
12 receipt of the documentation relating to the proposed home sale to visit the subject home and to
13 object to such home sale by providing written notice to the Debtors. If such an objection is
14 provided to the Debtors, the parties agree to attempt to resolve any objection in good faith, but the
15 Debtors shall have the option of filing an application for an order shortening time with this Court
16 on not more than 5 days notice as to why such home sale should proceed. While any such
17 objection is pending, the Debtors shall not be authorized to close such home in accordance with
18 this Order. If no objection is received, the Debtors shall be authorized to close such home in
19 accordance with this Order; and it is further

20 ORDERED that the Debtors may enter into and pay any expenses associated with
21 constructing or regarding the construction of a home, including, but not limited to sales contracts,
22 home construction contracts, or purchase order requests for the completion of entire homes (the
23 "Home Construction Contracts") upon the terms and consistent with any cash collateral order
24 entered in these cases, including the *Second Stipulated Interim Order (I) Authorizing Use of Cash*
25 *Collateral, etc.*; and it is further

26 ORDERED that for the avoidance of doubt, the Agent and Second Lien Agent are
27 authorized to take such actions as is necessary or appropriate to allow completion of a home sale
28

1 closing in accordance with the terms of this Order and the prior interim order on the Motion,
 2 including, without limitation, executing any documents necessary to release liens on the
 3 applicable home sold with such lien to attach to the sale proceeds in accordance with the terms of
 4 this Order and the prior interim order on the Motion;

5 ORDERED that the authority granted in this order and the terms and conditions hereof
 6 shall be effective as of the Petition Date; and it is further

7 ORDERED that the requirements set forth in Bankruptcy Rule 6003(b) are satisfied by the
 8 contents of the Motion and the Declarations filed in support thereof; and it is further


9 ORDERED that notwithstanding the possible applicability of Bankruptcy Rule 6004(h),
 10 the terms and conditions of this Order shall be immediately effective and enforceable upon its
 11 entry; and it is further

12 ORDERED that this Court shall retain jurisdiction with respect to all matters arising from
 13 or related to the implementation of this Order.

14 Dated: _____, 2009

15 APPROVED AS TO FORM AND CONTENT:

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¹ The Debtors in these cases, along with their case numbers are: Heritage Land Company, LLC (Case No. 09-14778); The Rhodes Companies, LLC (Case No. 09-14814); Tribes Holdings, LLC (Case No. 09-14817); Apache Framing, LLC (Case No. 09-14818); Geronimo Plumbing LLC (Case No. 09-14820); Gung-Ho Concrete LLC (Case No. 09-14822); Bravo, Inc. (Case No. 09-14825); Elkhorn Partners, A Nevada Limited Partnership (Case No. 09-14828); Six Feathers Holdings, LLC (Case No. 09-14833); Elkhorn Investments, Inc. (Case No. 09-14837); Jarupa, LLC (Case No. 09-14839); Rhodes Realty, Inc. (Case No. 09-14841); C & J Holdings, Inc. (Case No. 09-14843); Rhodes Ranch General Partnership (Case No. 09-14844); Rhodes Design and Development Corporation (Case No. 09-14846); Parcel 20, LLC (Case No. 09-14848); Tuscany Acquisitions IV, LLC (Case No. 09-14849); Tuscany Acquisitions III, LLC (Case No. 09-14850); Tuscany Acquisitions II, LLC (Case No. 09-14852); Tuscany Acquisitions, LLC (Case No. 09-14853); Rhodes Ranch Golf Country Club, LLC (Case No. 09-14854); Overflow, LP (Case No. 09-14856); Wallboard, LP (Case No. 09-14858); Jackknife, LP (Case No. 09-14860); Batcave, LP (Case No. 09-14861); Chalkline, LP (Case No. 09-14862); Glynda, LP (Case No. 09-14865); Tick, LP (Case No. 09-14866); Rhodes Arizona Properties, LLC (Case No. 09-14868); Rhodes Homes Arizona, L.L.C. (Case No. 09-14882); Tuscany Golf Country Club, LLC (Case No. 09-14884); and Pinnacle Grading, LLC (Case No. 09-14887).

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